

Protest of Abandonment

Docket No. AB-534 (Sub-No. 3X)

Lake State Railway Company

Protestant

Jeff Ratcliffe, Executive Director

Otsego County Economic Alliance

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Gaylord, MI 49735

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Description of Protestant's Interest in the Proceeding

The Otsego County Economic Alliance is a county-wide economic development organization. Our interest in this proceeding concerns the businesses affected by the proposed abandonment, affect of abandonment on the continued viability of the remaining rail service to our community should these businesses be forced to cease use of the line, and the affect this will have on community's long term economic development efforts.

Information Concerning the Group or Public Interest it Represents

The Otsego County Economic Alliance is a 501(c)(3) private, non-profit organization, whose mission is to facilitate economic growth in Otsego County through a public/private partnership that maintains economic vitality and stimulates economic growth while preserving the quality of life. One of our primary goals is to retain and expand existing businesses and attract new ones.

Specific Reasons Why Protestant Opposes the Application

1. The Otsego County Economic Alliance opposes specific claims made by Lake State Railway Company (LSRC) in Part III of their “Verified Petition for Exemption” dated March 28, 2007 and their reasons for abandonment listed therein and in Part II. E.

A. Detailed Scrutiny of the Abandonment is not Necessary to Further National Transportation Policy Goals

i. *“Abandonment ... will allow LSRC to exit the transportation market in an area where there is limited opportunity for future business ... and concentrate its resources on the portions of its system which hold commercial promise.”*

There are over 57 acres of developable sites along the line proposed for abandonment. There are approximately 170 acres of potentially developable rail accessible property along the new spur line to A&L Iron and Metal, Inc. (not 1,200 as LSRC claims) – of which only 23 acres are currently available and half of this would require additional investment in side tracks to serve it. Prior to the Georgia-Pacific (G-P) plant closure the number of rail customers in Gaylord and Otsego County had been increasing. The expansion of the A&L Iron and Metal, Inc. facility and construction of a new rail spur (funded by federal and state grants and a 0% loan from the state) to serve it was the latest. The sale of the G-P plant and property is pending and all projects planning to locate there will require inbound and outbound rail service. In the nearly six years that the Economic Alliance has been in operation and prior to the construction of the new spur line, all new rail users have been able to be accommodated on the existing line.

ii. *Abandonment will allow “LSRC to apply its assets more productively elsewhere (because maintenance and operating expenses will be avoided) will foster sound economic conditions and encourage efficient management.”*

LSRC claims that operating revenue is less than operating expenses and that with the loss of G-P, it lost its “overhead” traffic. However, with the construction of the new spur to serve

A&L Iron and Metal, LSRC picked up a minimum of 240 outbound carloads per year guaranteed. The pending sale of the G-P facility will likely result in significant new rail business and restore the balance of the lost overhead traffic. LSRC's calculations of its operating costs are inaccurate and potentially disingenuous. First, Gaylord does not have 16 weeks of winter weather requiring clearance of snow from tracks. Using the snowmobile trade in our area as a proxy for assessing number of weeks of significant snowfall, I consulted the Gaylord Area Convention and Tourism Bureau. They indicated that over the past 5 years Gaylord had an average of no more than 8-10 weeks of snowfall of any significance. Second, LSRC reduced its operations to Gaylord immediately after the closure of G-P to less than once per week. Even prior to the March 2006 G-P closure, a 3 day per week operation, using the car load information provided by LSRC, would have averaged less than one car per trip that LSRC claims took 6 hours to deliver over 4 miles of track – not a very efficient, let alone realistic, operation on the line proposed for abandonment. See 1.B.iii for a detailed assessment of operational costs.

LSRC acknowledges that they have deferred maintenance on the line. They have not approached any of their customers regarding sharing the cost of maintenance – either line maintenance or winter snow clearing. Nor have they approached the state regarding assistance through the Michigan Department of Transportation's rail infrastructure and improvement financing programs to undertake the maintenance LSRC acknowledges they deferred.

iii. "Because LSRC has demonstrated its expertise and success in the rail industry, an exemption which allows LSRC to abandon its unused track will enhance the continuation of a sound rail transportation system and will promote more efficient management."

Nowhere has the LSRC demonstrated its expertise and success in the rail industry and the track is not "unused." When Lake State first approached the four shippers in December 2006, the shippers were told that Lake State was going to abandon the line because the City of Gaylord

and the Otsego County Road Commission wanted the tracks out of the area – a statement which had no basis in fact and showed a complete lack of an ability to operate a sound rail system, let alone promote efficient management. This communication was confirmed by the shippers and Mr. Gamble at LSRC.

The LSRC has apparently decided it needs the cash that the scrap value of the steel and value of the land will generate. Working to retain and increase business in Gaylord is apparently not an option for the LSRC. When asked at a January 26, 2007 meeting with local and state officials whether LSRC consider using the cash generated from the liquidating the abandoned rail line to relocate the existing businesses, Mr. Gamble's response was "probably not." To date, the only response to our requests to LSRC to develop alternative off-loading sites to relocate the affected customers has been the filing their Verified Petition to Abandon the line in question.

Tearing up the rail and sending business packing will provide the LSRC with a potential injection of cash, primarily from the State of Michigan, to apparently be used on their newly acquired Saginaw Bay Southern unit, but it will not promote continuation of a sound rail transportation system nor will it promote efficient management on the remaining track serving Gaylord and Otsego County.

iv. "Abandonment ... will not operate to the detriment of the public health or safety."

Abandonment will put hundreds of additional trucks onto the regional highways and local roads which will create a detriment to public safety.

B. The Transaction is Limited in Scope

i. "The Line is only 4.15 miles long, ... and is a small portion of Lake State's overall system."

LSRC currently owns approximately 5.5 miles of rail right-of-way in Otsego County and has an easement to operate over another 2 miles (new spur line) across the Georgia-Pacific Property to A&L. Of this, approximately 0.5 miles at the end of the line being proposed for

abandonment has already had the track removed. The 105 mile balance of the track and ROW that serves Gaylord and Otsego County is owned and maintained by the State of Michigan (from Milepost 11 at Linwood, Michigan just north of Bay City, to Milepost 116, just south of the I-75/Old 27 South interchange at Gaylord). In terms of LSRC's system, the amount of rail being proposed for abandonment represents over 50% of their total system serving Gaylord and Otsego County. See Exhibit A for a detailed map of LSRC's Gaylord track and location of State of Michigan track and Exhibit B for MDOT verification of State-owned track – although the noted Milepost is in Gaylord, not Grayling.)

ii. *“... LSRC's operations ... have been very limited in scope. ... serv[ing] only 4 customers”*

There are four customers located on the last 1.4 miles of track proposed for abandonment. Use of rail by these customers has grown significantly over the past 5-6 years. One of these customers, Northern Energy, invested in a new 6,000 square foot warehouse in 2006 based on assurances from LSRC of continued rail service to their location. Another customer, Superior Well Service, in 2005, entered into a multi-year lease and invested in leasehold improvements to create an unloading facility based on assurances from LSRC of continued rail service to their location.

iii. *“If operations were to continue, LSRC would be faced with limited rail traffic and substantial on-going losses.”*

First, as long as the LSRC operates efficiently, with less than one trip per week, they should be able to operate without a loss. Our calculations using numbers supplied by LSRC in their petition show the following:

Revenue (2006):	\$159,032
- Operating Cost:	\$ 37,656 (One operation on line per week @ 6 hrs./trip!)
- Snow Removal:	\$ 8,192 (Once per week x 10 weeks)

- M/W Patrolling: \$ 12,319 (based on a reduced schedule, this could be reduced)

Net Revenue: \$100,956

Second, the new A&L car loads are providing outbound overhead traffic on the line that is currently at 50% of the former G-P traffic and with the potential for substantially more. The pending sale of the G-P plant and property will generate additional new inbound and outbound overhead traffic.

Finally, since 1994, the LSRC has served Gaylord over 105 miles of state-owned and maintained track at no cost other than “basic maintenance.” Over the past five years, the State of Michigan has invested \$12.8 million to improve bridges, track structure and road crossings on this line. See Exhibit B. We are hard pressed to understand how LSRC can be operating with substantial on-going losses under these circumstances.

C. Detailed Scrutiny of the Transaction is Not Needed to Protect Shippers from Abuse of Market Power

i. “... Abandonment does not threaten shippers with reductions in available, competitive alternatives, or otherwise expose them to market power abuse.”

Both Northern Energy and Superior Well Services have indicated that abandonment does threaten them with reduction in available, competitive alternates to shipping their products. They will be forced to have their products shipped by truck since they do not have alternate offloading sites available, contrary to LSRC’s contention. The remaining two shippers have indicated they will switch to off loading from a competing rail line (Great Lakes Central) at facilities near Kalkaska, Michigan and truck their product into Gaylord.

ii. “... Shippers can use alternative service to transport their products.”

Of course the four shippers can use truck transportation to obtain their products. The point is that shipping by rail is much more cost effective for them – that is why they do it. If the tracks are pulled up and they have no place to receive their shipments by rail in our community, they will be forced to pay more to have their product shipped by truck from its originating source or as will be the case of two shippers (Halliburton and Magnum Solvents), they will off load from another railroad and ship by truck into the Gaylord area.

iii. “LSRC submits that the proposed abandonment is not a transaction with market power abuse implications as no substantial anticompetitive or adverse effects on shippers will result from the abandonment”

Northern Energy will see a substantial increase in the cost of lubricants and fuels (\$0.36-\$0.40 per gallon) and have indicated they predict the loss of significant market share. Superior Well Service will face an increased cost for transporting industrial sand which will decrease their ability to compete for business within the natural gas production industry that they serve.

2. Statements made in the LSRC’s Environmental Report are incorrect or unsubstantiated as follows:

Section 1. Proposed Action and Alternates

LSRC states three of the four shippers can be accommodated “at a point south of Milepost 116.8 or elsewhere along the Lake State system including points along the new industrial spur that Lake State owns in Gaylord.” The site LSRC refers to as “a point south of Milepost 116.8” was never investigated as to land use. The area is adjacent to residential areas and is zoned Residential. The railroad can operate through the area by right, but no industrial or commercial activities including unloading can occur in this area. In addition, according to Halliburton, the right-of-way the LSRC proposed using to unload cars does not provide adequate

space even if the land use were appropriately zoned. As to the other areas along its system in Gaylord, the LSRC has taken no steps to acquire or make available appropriate unloading sites let alone relocate any of the referenced users.

LSRC states there are no historic structures along the line. There are structures that are over 50 years old along the line (the criteria that requires State Historic Preservation Office review) including a structure owned by LSRC (former Gaylord Lumber Company in downtown Gaylord). No evidence was provided that a review had been conducted to determine their historic nature.

The LSRC states that “abandonment of the subject line will positively impact Lake State as it will allow it to avoid the costs associated with maintenance of 4.15 miles of underutilized track.” The track has seen an over 100% increase in use, but has seen little, if any, maintenance, and has been allowed to deteriorate to a point where it is termed, by the LSRC, as “not accepted track.”

Section 2. Transportation System

The LSRC has not provided an accurate response to this section. Since no adequate unloading sites have been provided by the LSRC, two of the four users will be forced to find locations on another railroad system west of our area and ship their product into the community by truck. The other two customers, whose unloading facilities and recent investments in storage capacity preclude them from relocating, will be forced to ship product by tanker truck. This will result, according to Northern Energy, in at least 285 large tanker trucks entering our downtown per year. For a fast growing, small town, this additional truck traffic will have an adverse impact and run counter to our community’s efforts at reducing truck traffic through the downtown and a congested area to the west of downtown.

Section 3. Land Use

The LSRC never consulted the City or County planning agencies with jurisdiction over land use. As was noted in Section 1 comments, a proposed off-load site at the south end of the area to be abandoned does not meet existing land use requirements as a consultation would have shown. As was noted in Section 2 comments, our community has been undertaking efforts to reduce truck traffic in our downtown area which consultation would have revealed.

Section 7. Safety

(ii). LSRC documentation shows that at least 48 carloads of petroleum-based lubricants, fuel and hazardous chemicals will be forced onto the state highways and local roads by the proposed abandonment.

(iii). The line to be abandoned passes through a site of known contamination. The LSRC also owns property in the downtown that contains a former lumber yard that may contain contamination due to historical use. No assessment of this property has been provided.

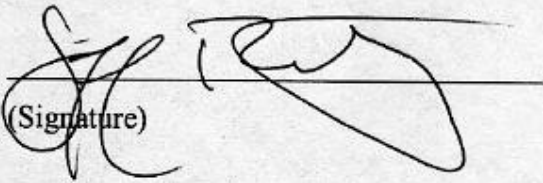
3. Impact on rural and community development.

Impacts on our community's development are as follows:

1. Loss of jobs and associated economic activity due to relocation of unloading operations of two companies out of the county and probable downsizing of Northern Energy due loss of customer base due to higher cost of product resulting from trucking from source. Halliburton indicated that they spent over \$100,000 annually to house their unloading crews in Gaylord which will be lost.
2. A \$0.36 to \$0.40 per gallon increase in cost of products for one company resulting from having to ship by truck. Company predicts loss of significant market share due to increased prices. This would result in further job losses.
3. Loss of carload shipments to area will result in railroad reducing its service to remaining shipper and eventually lead to discontinuation of service to Gaylord. Loss of rail service

will undermine community's effort at marketing its multi-modal transportation accessibility. Given our northern Michigan location, with a very large surplus wood supply due to the recent closure of a Georgia-Pacific particle board plant, rail service provides an important location incentive to companies looking at locating new wood-based manufacturing operations in our community.

I, Jeff Ratcliffe, Executive Director of the Otsego County Economic Alliance, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this pleading.


(Signature)

4/24/07
Date

LSRC Gaylord System Map - Exhibit A

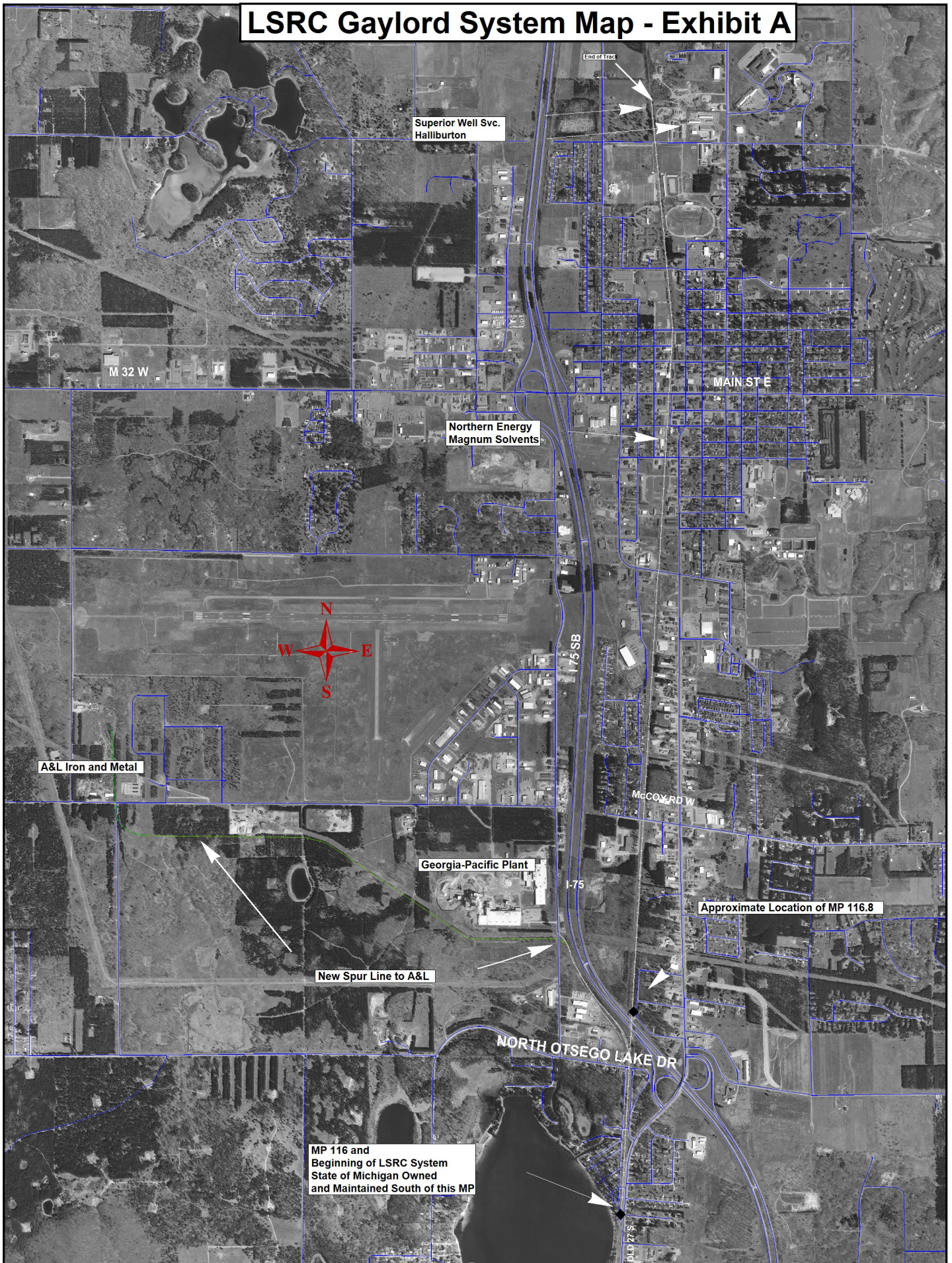




Exhibit B

JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

KIRK T. STEUDLE
DIRECTOR

April 18, 2007

Mr. Jeff Ratcliffe, Executive Director
Otsego County Economic Alliance
1062 Cross Street
Gaylord, Michigan 49735

Dear Mr. Ratcliffe:

Subject: Information on State-Owned Line – Linwood to Mile Post 116

I offer the following information as requested in your April 17, 2007, letter.

The Lake State Railway Company assumed the Detroit & Mackinac Railway Company Right of Way Agreement in 1992 and entered into a third party agreement with the Michigan Department of Transportation (MDOT) in 1994. Under the agreement, the operator has to provide rail freight service and basic maintenance on the line. In exchange, the railroad is not required to pay for the use of the line.

The Department has invested \$12.8M in infrastructure improvements over the past five years on the Lake State Line. The improvements were to the bridges, track structure, and road crossings over the 105 miles of state-owned track between Linwood (Mile Post 11) and Grayling (Mile Post 116).

MDOT does not collect information relating to rail traffic volume. That information would have to be obtained from the railroad operator.

If you have any questions, please call me at (517) 373-6494.

Sincerely,

Melvin G. Williams, Administrator
Freight Services and Safety Division
Bureau of Aeronautics and Freight Services